

Application No. 10/762,616  
Amdt. dated 3 November 2009  
Reply to Office Action of 2 September 2009

### **REMARKS / ARGUMENTS**

In the above-identified Office Action the Examiner has rejected claims 1, 13, 15, 17, 19 and 21 as unpatentable over the patent publication to Ahmad et al. in view of the article by Wallin et al. The Examiner has stated that it would have been obvious to add the tinidazole from Wallin et al. to the composition containing fluconazole in Ahmad et al. Applicant disagrees with the Examiner's conclusion in this regard, noting that neither reference teaches the amounts claimed. Further, both references tout the efficacy of using two grams of the curative agent delivered in four capsules. Applicant's claim expressly recites less than two grams tinidazole and secnidazole in a unit dosage. The Examiner states that motivation to lower the respective dosages resides in the motivation to minimize the size of the tablet for easier administration. However, Applicant notes that the size of the tablet has apparently been minimized by both references through the use of more tablets, thus eliminating such motivation.

Further, Applicant notes that Ahmad et al. teaches the application of an oral medication comprising fluconazole in combination with an external topical composition. Thus to combine the teaching of Wallin et al. with the teachings of Ahmad et al. must necessarily include the topical composition in the treatment. Thus, a reasonable conclusion would be that, at the time, the oral administration of fluconazole was not considered sufficient for complete treatment of the condition. It is apparent, then, that something in addition to simply the oral administration of fluconazole was necessary. Applicant has filled this need by the additional oral application of less than two grams of tinidazole.

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With regard to the teachings of Wallin et al., there is no suggestion in Wallin et al. that more is needed in terms of treatment than the four tablets of 500mg of tinidazole which, as stated by Wallin et al., gave the best result. Thus there is no suggestion to combine tinidazole with another treatment to reach the desired results.

The Examiner stated that Ahmad et al. teaches that other antimicrobials may be present such as secnidazole or tinidazole. However, Applicant notes that Ahmad et al. teaches that the compositions of his invention may be selected from an antifungal and an anti-bacterial and anti-viral or probiotic agent or combination thereof. Ahmad et al. lists 34 antifungal agents, 8 anti-bacterial agents, 6 anti-viral agents, and 23 probiotics. As stated in *Merck v. Danbury*, 231 F. 3d 1339 (Fed Cir 2000), the Federal Circuit explicitly rejected the concept that selected portions of large disclosures may be combined to create specific inventions and to obtain the extraordinary properties of that invention. Thus, to select from the 71 compounds listed in paragraph 58 of Ahmad et al., and combine two of those compounds, does not provide one with the "finite number of identified predictable potential solutions to the recognized need or problem" (MPEP 2143 (E)). As a result, there is no suggestion or motivation in the art to combine the two compounds. Further, Applicant notes that tinidazole is not, in fact, identified in paragraph 58 of Ahmad et al., but rather timidazole.

Claims 2, 3, 5, 18, 20 and 22 have been rejected as unpatentable over Ahmad et al. in view of Videau et al. the above arguments in favor of the combinations of fluconazole and tinidazole are applicable here to that of the combination of fluconazole and secnidazole and, thus, Applicant believes that these claims are allowable as well.

Claim 16 has been rejected as unpatentable over Ahmad et al. and Wallin et al. taken further in view of U.S. patent 5, 660, 860. Insofar as Claim 1 has been argued above as patentable, Claim 16 contains all of the limitations as Claim 1 and is also considered patentable.

Application No. 10/762,616  
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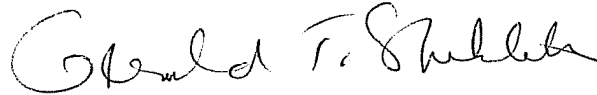
Applicant hereby requests reconsideration and reexamination thereof.

No further fee or petition is believed to be necessary. However, should any further fee be needed, please charge our Deposit Account No. 23-0920, and deem this paper to be the required petition.

With the above amendments and remarks, this application is considered ready for allowance and applicant earnestly solicits an early notice of same. Should the Examiner be of the opinion that a telephone conference would expedite prosecution of the subject application, he/she is respectfully requested to call the undersigned at the below listed number.

Application No. 10/762,616  
Amdt. dated 3 November 2009  
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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gerald T. Shekleton". The signature is fluid and cursive, with the first name "Gerald" being more prominent.

Dated: 3 November 2009

Gerald T Shekleton  
Reg. No. 27,466  
Husch Blackwell Sanders Welsh & Katz  
120 South Riverside Plaza, 22<sup>nd</sup> Floor  
Chicago, Illinois 60606  
Phone: (312) 655-1511  
Fax: (312) 655-1501